

**LAW
OFFICES**

www.lawsjw.com

OF SHAWN J. WALLACH

New Jersey:

28 Leroy Place • Red Bank, NJ • 07701
Tel: (732) 654-2020 • Fax: (732) 865-7726

New York:

1931 Mott Avenue, #417 • Far Rockaway, NY • 11691
Tel: (718) 425-4073

October 7, 2015

Hon. George B. Daniels, U.S.D.J.
United States District Court
Daniel Patrick Moynihan
United States Courthouse
50 Pearl Street
New York, NY 10007

**Re: Roca Labs, Inc. v. Opinion Corp. et al.
Case No. 15-mc-00289-P1**

Dear Judge Daniels:

This letter is in response to Opinion Corp. and Consumer Opinion Corp's (collectively the "Defendants") request to stay the proceedings. As background, Roca Labs, Inc. (the "Plaintiff") commenced litigation in Florida for Defendants' alleged violations of Florida's Deceptive and Unfair Trade Practices Act, defamation, and other actions that arose in the State of Florida (Case 8:14-cv-02096-VMC-EAJ Amended Complaint Dkt. No. 114). The matter is before the United States District Court for the Middle District of Florida, discovery (except for the depositions of Podolsky and Syrov) is complete, Summary Judgment, *Daubert* Motions and Motions in Limine are presently before the Court and the trial term begins December 7, 2015 (Case Management Order Dkt. No. 49). The sole issue before this Court is compelling the compliance with Subpoena *Duces Tecum* of Michael Podolosky and Alex Syrov the sole shareholders and employees of Defendants. For the reasons described below, the hearing on compelling compliance with the Subpoenas should take place as scheduled and we believe that Plaintiff's Motion to Compel should be granted.

Defendants now request that this Court stay the present proceedings until the matter of *FTC v. Roca Labs, Inc., et al.*, (Case No. 15-cv-02231) is resolved. The *FTC v. Roca Labs, Inc.*

matter is irrelevant to the case at bar and despite defense counsel's assertions to the contrary, no matter what the outcome in the *FTC* case it will have little or no impact on the current case. The *Roca Labs v. Opinion Corp. et al.* case before the Middle District of Florida pertains to the actions of Defendants, not Plaintiff Roca Labs. Despite Defendants' representations, there is no effort by Roca Labs "to seek judicial endorsement of its practices" in Florida. Rather, Roca is trying to stop the alleged violations of Defendants on their website pissedconsumer.com.

More significantly, at the present time the United States District Court for the Middle District of Florida has *not* stayed the *Roca Labs v. Opinion Corp. et al.* and it is highly unlikely that any stay will be granted. The trial period is less than 8 weeks away and Defendants have no valid basis for a stay. Moreover, Plaintiff believes it may be granted partial summary judgment in the matter. (See Dkt. No. 172).

Defendants cite *Kappel v. Comfort*, 914 F. Supp. 1056, 1058 (S.D.N.Y. 1996) to support their position that a stay be granted. However, an application of the factors from *Kappel* would result in their request for a stay being denied. Here, the Plaintiff will be highly prejudiced should Messrs. Syrov and Podolsky not be ordered to comply with their respective Suboepa *Decus Tecum*. The trial period is less than 8 weeks away and key documents and testimony needs to be obtained from Messrs. Podolsky and Syrov. Moreover, Messrs. Podolsky and Syrov represented to the United States District Court for the Middle District of Florida that they would in fact comply with the Subpoenas, yet failed to do so. There can be no prejudice in having Messrs. Podolsky and Syrov appear at depositions that they had previously stipulated to attend [See Joint Notice to Court, Doc. No. 165] and severe prejudice to Plaintiff if it is unable to obtain their depositions and responsive documents prior to the December 2015 trial.

The attempt to stay this proceeding is Messrs. Podolsky and Syrov's latest attempt to avoid being deposed. For nearly a year, Defendants, Michael Podolsky, and Alex Syrov have attempted to avoid discovery. Messrs. Podolsky and Syrov ignored the first subpoenas issued to them and have made outlandish assertions in attempts to avoid discovery, such as they can only be deposed on weekends or they are in the Ukraine and unavailable. On June 26, 2015, the parties filed a Joint Notice to the court stipulating to a July 13, 2015 deposition of Michael Podolsky and a July 14, 2015 deposition of Alex Syrov. [See Joint Notice to Court, Doc. No. 165]. Despite their representations to the Court, Mr. Syrov failed to appear at his deposition and Mr. Podolsky appeared at his deposition, but failed to produce any documents.

For the foregoing reasons, Plaintiff respectfully requests that the matter before the Court not be stayed and that the hearing proceed as scheduled.

Respectfully Submitted,

/s/ **Shawn J. Wallach**
Shawn J. Wallach, Esq.

/s/ **Paul Berger**
Paul Berger, Esq.